# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1900.**

No. 286.

JACK DAVIS, APPELLANT,

*vs.*

J. E. BURKE, SHERIFF OF CASSIA COUNTY, STATE OF IDAHO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IDAHO.

FILED MAY 18, 1900.

(17,768.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 5, 1900.

1 *Petition.*

In the Circuit Court of the United States in and for the Ninth Circuit and District of Idaho.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus.*

*Petition for Writ of Habeas Corpus.*

To the honorable the circuit court of the United States, ninth circuit, in and for the district of Idaho, central division thereof:

Your petitioner, Jack Davis, respectfully represents and shows to this honorable court that he is a citizen of the United States and a resident of the State of Idaho; that he is unjustly and unlawfully and in violation of the Constitution of the United States detained and imprisoned in the county jail of Cassia county, State of Idaho, by J. E. Burke, sheriff of said Cassia county, by virtue of certain proceedings, judgments, and orders hereinafter more fully referred to.

Your petitioner further shows that at the April term, 1897, of the district court of the fourth judicial district of the State of Idaho in and for Cassia county and on or about the 5th day of April, 1897, John C. Rogers, then the district attorney in and for said judicial district and county, filed in said district court a document in writing entitled as an "information," a copy of which document, with the endorsements thereon, is hereto attached, marked "Exhibit A," and is hereby made a part hereof.

Your petitioner further shows that he was held, placed upon his trial, and tried upon the charge of murder by virtue of and under said so-called information, and not otherwise, at the said April, 1897, term of said district court; that said trial was before a jury in and by said court empaneled and sworn to try said charge of
2 murder in so-called information alleged against your petitioner; that said trial was commenced on the 7th day of April, 1897, and proceeded from day to day until the 15th day of April, 1897; that on the 15th day of April, 1897, said jury made, rendered, and returned their verdict in said court, whereby they convicted and found your petitioner guilty of murder in the first degree, as charged in said so-called information, and thereupon and on the 24th day of April, 1897, the said court made, pronounced, and entered its judgment and commitment upon said verdict and thereby sentenced your petitioner to be remanded to the custody of the sheriff of said Cassia county and to be hanged by said sheriff on the 4th day of June, 1897, either within the walls of the county jail of said county or at some convenient and private place therein. A copy of said judgment, commitment, and sentence is hereto attached, marked "Exhibit B," and is hereby made a part hereof.

Your petitioner further shows that thereafter such proceedings were had that he did, on or about May 1st, 1897, make and file in said

court his motion for a new trial, which said motion was duly presented to said district court and by it, on or about the 6th day of January, 1898, overruled and denied; that in due time and as provided by law your petitioner took and perfected an appeal from said judgment, and also an appeal from the order of said court overruling his said motion and denying a new trial, to the supreme court of the State of Idaho, and that on or about the 15th day of June, 1898, said judgment of conviction and said order overruling and denying your petitioner's motion for a new trial was by said supreme court affirmed; that pending said appeal the execution of your petitioner was stayed by operation of law; that on the 12th day of September, 1898, at the September, 1898, term of said district court, the remittitur of said supreme court having been sent to, received by, and filed in said district court, to the effect that said judgment and order denying your petitioner a new trial be affirmed, the said district court resentenced your petitioner and issued its death war-
3 rant, by which order of resentence and death warrant said court ordered and sentenced your petitioner to be remanded to the custody of said sheriff and by him to be kept until the 28th day of October, 1898, and on that day by said sheriff to be hanged until dead, either within the walls of said county jail or at some convenient and private place in said Cassia county. A copy of said order of resentence and death warrant is hereto attached, marked "Exhibit C," and is hereby made a part hereof.

Your petitioner further shows that on or about the 25th day of July, 1898, he duly made, in accordance with and under the constitution and statutes of the State of Idaho, an application for pardon of and for said offense alleged in said so-called information to the board of pardons of said State; that on or about the 19th day of October said board of pardons, by its order, requested the governor of said State to reprieve your petitioner until December 16th, 1898; that on October 20th, 1898, said governor reprieved your petitioner until December 16th, 1898; that on the 5th day of December, 1898, said board, by its order, continued said application for pardon and reprieved your petitioner until the 1st day of February, 1899; that on the 23rd day of January, 1899, said board of pardons, by its order, denied said application for pardon.

Your petitioner further represents and shows that prior to the adoption of the constitution of the State of Idaho and prior to the admission of the Territory of Idaho as a State, on July 3rd, 1890, there was no law of or applicable to said Territory authorizing or permitting any person to be held to answer or prosecuted for a capital crime or for any felony unless on and except by indictment found by a grand jury duly empaneled and sworn, and by the law of said Territory such offenses were required to be prosecuted by such indictment and not otherwise.

That section 8 of article one of the constitution of the State of Idaho provides as follows:

"No person shall be held to answer for any felony or crim-
4 inal offense of any grade, unless on presentment or indictment of a grand jury or on information of the public prose-

cutor, after a commitment by a magistrate, except in cases of impeachment, in cases cognizable by probate courts or by justices of the peace, and in cases arising in the militia when in actual service in time of war or public danger; provided, that a grand jury may be summoned upon the order of the district court in the manner provided by law; and provided further, that after a charge has been ignored by grand jury, no person shall be held to answer or for trial therefor upon information of the public prosecutor."

That at the first session of the legislature of the State of Idaho a bill was introduced by said legislature, entitled "An act to provide for prosecuting offenses on information and to dispense with the calling of grand juries, except by order of the district judges," which said bill prescribed the mode of filing informations and the procedure relating thereto.

That said bill was pretended to be passed by said legislature and was presented to the governor for his approval and approved by him on March 13th, 1891, but said bill failed of enactment and was not passed by either house of said legislature and is not and never became or was a law or statute of the State of Idaho or valid or existing as a statute or law in any respect or for any purpose whatever, for the reason that said legislature in attempting and pretending to pass said bill neglected and failed to observe or comply with the provisions and requirements of section fifteen (15) of article three (3) of the constitution of the State of Idaho in the manner and particulars hereinafter mentioned and specified.

That all of the proceedings of said legislature of the State of Idaho in regard to the introduction, consideration, and passage of said so-called act and said bill and all things done relating thereto are shown by the journals of the two bodies, to wit, the senate and house of representatives, composing said legislature, and by the entries in said journals; that a full, true, correct, and complete transcript and copy of all of the journals and of all entries therein in anywise relating to said bill and covering and including each and all steps and proceedings touching the introduction, consideration, and passage thereof, duly certified by the secretary of said State, are hereto attached, marked "Exhibit D," and are hereby made a part hereof.

Your petitioner further represents and shows that on or about the 30th day of January, 1899, James H. Hawley, Esq., a citizen and resident of the said State and then and now an attorney and counsellor of this and of said supreme court and at all times herein mentioned the attorney and leading counsel of your petitioner, made and filed (because of the absence and inaccessibility of your petitioner and at his request and in his behalf) in the district court of the United States in and for the district of Idaho, central division, and before the judge of said court, at chambers, a verified petition for a writ of *habeas corpus*, wherein he set up and submitted, among other things, the facts aforesaid, and prayed that your petitioner be taken before said last-named court to do, submit to, and receive what the law might direct.

That the time within which said attorney for petitioner was re-

quired to prepare said application for a writ of *habeas corpus* and to obtain the exhibits thereto attached, a portion of which are attached hereto, was, as your petitioner is informed by said attorney and believes, inadequate to enable him to consider and examine the laws, precedents, and authorities bearing upon and in relation to the various important, complicated, and difficult constitutional and other questions involved in said application.

That on said 30th day of January, 1899, the judge of said United States district court, after argument of said attorney, made without adequate time, opportunity, or preparation, made its order and
6 judgment, whereby he denied said application and writ, and on the same day your petition-, through his said attorney, by the allowance of said judge, perfected an appeal from said order and judgment to the United States circuit court of appeals for the ninth circuit; that pending said appeal the execution of your petitioner was stayed by an order made by said judge on said 30th day of January, 1899; that on or about the 16th day of October, 1899, said United States circuit court of appeals made and rendered its decision in the matter of said appeal, whereby it adjudged that the question raised by said application for a writ of *habeas corpus* was whether your petitioner had been and was being deprived of his liberty and threatened with deprivation of life without due process of law, and contrary to the fifth — fourteenth amendments of the Constitution of the United States, in that the said district court of Idaho had no jurisdiction to try your petitioner on the said charge of murder under said or any information; that such question involved a construction of the Federal Constitution; that said circuit court of appeals was without jurisdiction in the premises because said appeal involved such construction. Accordingly said circuit court of appeals dismissed said appeal.

Your petitioner represents and shows that on the 23rd day of February, 1899, all of the laws of the State of Idaho relative to the incarceration and execution of persons convicted of capital offenses which were in force at the time of the homicide with which your petitioner was charged by said so-called information and when he was arrested, tried, convicted, and sentenced, as aforesaid, were repealed by an act of the legislature of said State entitled "An act providing for the conveyance and transportation of convicts from the place of conviction to the State prison, and regulating the time, place, and manner of infliction of the death penalty, and to
7 provide means for the execution of such penalty, and amending sections 8009, 8019, 8021, 8022 of the Revised Statutes of the State of Idaho; also amending sections 8008 and 8504 of the Revised Statutes of the State of Idaho, as amended by an act entitled 'An act providing for the conveyance and transportation of convicts from the place of conviction to the State prison,'" approved February 13th, 1899, which act was passed by said legislature, duly approved, and became a law of said State on the 23rd day of February, 1899.

That there is no other law of said State relating to the incarceration of persons convicted of felony or providing for the execution of

the punishment of death than the said act aforesaid, approved February 23rd, 1899.

Your petitioner further represents and shows that subsequent to the time when said last-mentioned act became a law the warden of the State prison therein mentioned took your petitioner from the custody of the sheriff of said Cassia county and into his own custody, and incarcerated and held your petitioner in confinement in said State prison, at Boisé City, in said State, in accordance with and for the purposes of the provisions and requirements of said act of February 23rd, 1899, until about the first of January, 1900, when said warden returned your petitioner to the custody of the sheriff of said Cassia county, which sheriff then took your petitioner back to and thence hitherto has confined and now holds him in the county jail of said county; that your petitioner has been imprisoned and deprived of his liberty at all times since his said conviction, as follows: Prior to the passage of said act of February 23rd, 1899, in the county jail of said Cassia county and by the sheriff of said county; subsequent to the passage of said act and until about the first of January, 1900, in the State prison at said Boisé City, and by the warden of said prison; ever since about the first of said January and now in the county jail of said Cassia county and by the sheriff of said county.

Your petitioner further represents and shows that he was
8 at all times prior to the passage of said act of February 23rd, 1899, threatened with deprivation of life by said sheriff, and thereafter and while he was so in the custody of said warden he was threatened with deprivation of life by said warden as provided by said act; that the judge of said fourth judicial district of the State of Idaho now threatens to again sentence your petitioner to death on or about the 2nd day of April, 1900, by then and in and as the said district court of said county making, entering, and issuing his and its sentence, commitment, and death warrant, and thereby ordering that your petitioner be hanged either by said sheriff or by said warden.

Your petitioner further represents and shows that his detention and imprisonment and threatened deprivation of life and all and singular the proceedings against him aforesaid are illegal, to wit:

First.

That he is and has been restrained of liberty, threatened with deprivation of life, and denied the equal protection of the laws, contrary to the constitutions of the State of Idaho and of the United States, and particularly in violation of the fifth and fourteenth amendments of the Constitution of the United States, in this:

That the district court of the fourth judicial district of the State of Idaho never acquired and did not have jurisdiction to hold your petitioner to answer or to try him for the offense charged in said so-called information, for the reason that there was no indictment or presentment found or presented to said court against your petitioner or information presented to said court against your petitioner under or upon which he could be legally held, tried, or convicted, in that—

The pretended law of the State of Idaho relating to informations,

hereinbefore referred to, approved March 13th, 1891, and found on pages 184 to 186, inclusive, of the Laws of the Third Session
9 of the Legislature of said State, is unconstitutional, illegal, and void and is not and never became a law of said State, for the reason that said bill aforesaid providing for the said alleged information act of March 13th, 1891, was never passed, as required by the mandates and provisions of section 15th, art. 3, of the constitution of the State of Idaho, and particularly for the reasons, among others, which your petitioner will urge:

(*a.*) That said bill, with the amendments thereto, was never printed; that neither the amendment thereto nor the bill as amended was ever printed for the use of the members of either the house or senate of said legislature; that said bill was put upon its final passage before it, with the amendments thereto, had been printed for the use of the members.

(*b.*) That said bill was not read on three several days in each house previous to the final vote thereon; that said bill as amended was never read in said house; that said bill as amended was not read three times in the said senate before the final vote thereon.

(*c.*) There was no case of urgency shown by any journal entries authorizing the said senate to suspend the constitutional provision of said section requiring bills to be read three times on three several days.

That the three several readings required by said section of said article of said constitution were never dispensed with.

(*d.*) That said bill on its final passage in said house was not read "at length" nor "section by section."

(*f.*) That on the final passage of said bill in said house the vote was not by yeas and nays.

(*g.*) That on the final passage of said bill in said senate the vote was not by yeas and nays.

(*h.*) That there was no yea-and-nay vote upon the final passage of said bill entered upon the journal of said house and the journal of said senate.

10 (*i.*) That a majority of the members present in the said house did not concur in said bill as amended by said senate; that said bill was never concurred in by a majority of the members present in each house of said legislature.

(*j.*) That said two houses never agreed or came to a common legislative intent as to the provisions of or on the passage of said bill.

Your petitioner epitomizes his objections and contentions so far as they relate to his being held to answer, tried, convicted of murder, and sentenced to be hanged under and by virtue of said information as follows:

1. That section 8 of art. 1 of the constitution of the State of Idaho is not self-executing, but required legislative action before it could become operative.

2. That the information act of March 13, 1891, was and is invalid and void because it was not passed in accordance with the requirements of the Idaho constitution.

3. That at the time of the homicide with which your petitioner

was charged and when he was tried, convicted, and sentenced, as aforesaid, there was no law in the State of Idaho for prosecutions by information in capital cases; the said district court of said State was without jurisdiction, and the trial, conviction, sentences, and proceedings aforesaid were illegal and void, and therefore

4. That your petitioner has been and is being restrained of his liberty and threatened with deprivation of life without due process of law and in violation of the fifth and fourteenth amendments to the Constitution of the United States.

Second.

Your petitioner further represents and shows that all of the statutory provisions of the State of Idaho applicable to the punishment of capital offenses or applicable to the punishment of your
11 petitioner when or after he was convicted of murder, as aforesaid, were repealed and absolutely obliterated by said act of the legislature of said State approved February 23rd, 1899.

That as to the place and manner of incarceration and executing the punishment of death, so far as the laws of said State provided for the same when the homicide of which your petitioner stands charged by said so-called information and when he was so tried, convicted, and sentenced, the following changes and additions applicable to your petitioner were made by said act of February 23rd, 1899, to wit:

(*a*.) Section 8009 of said act of February 23rd, 1899, hereinafter called the "new law," requires the warden to keep the convicted person in "solitary confinement" in the State prison until the infliction of the death penalty. The former and repealed law contained no such provisions.

(*b*.) By section 8021 of the new law your petitioner is denied and deprived of the right of having his friends, counsel, and ministers of his own choosing present at the time of his execution. By section 8021 of the repealed law he was entitled to have such persons present at said time. By said section 8009 of the new law visitation of all persons, save those enumerated therein and those only in accordance with arbitrary prison rules, is denied. The old and repealed law contained no such provision.

(*c*.) Section 8021 of the new law requires the warden to execute the death penalty within the walls of the State prison. The old and repealed law required the punishment of death to be inflicted by the sheriff of the county within the walls of the county jail or in some convenient private place in the county.

Your petitioner shows that the repeal of all statutory provisions of said State relating to punishment, as aforesaid, and the creation of new laws providing punishment, as aforesaid, resulted in at least the following changes and additions to the punishments in force when said homicide was committed, to wit:
12 1, solitary confinement; 2, denying visitation of all persons, save those enumerated by the new law and those under prison rules; 3, the ignominy of execution within the State penitentiary.

And herein your petitioner alleges:

First. That sending the petitioner to the State prison to be executed, keeping him there in solitary confinement until the infliction of the death penalty, denying visitation of all, save certain persons enumerated and these only in accordance with prison rules, and withdrawing from petitioner the rights and privileges conferred by the repealed law have each and all the effect of imposing upon him additional penalties and changing the manner and character of punishment to his prejudice.

Second. That the amending statute and existing law, having been passed since the commission of the alleged crime and imposing different and additional penalties and punishment and depriving petitioner of rights and privileges which he had at such time, is, as to him, an *ex post facto* law, and therefore contrary to sections 9 and 10 of art. 1 of the Constitution of the United States, as well as to sections 16 of art. 1 of the constitution of the State of Idaho.

Third. That the new law is, as to petitioner, inoperative, because it is *ex post facto*, in that it changes the manner of punishment, imposes additional punishment, and deprives petitioner of rights existing and available to him at the time of the homicide and when he was tried and convicted therefor.

Fourth. That the old law, being repealed, cannot be made operative for any purpose.

Fifth. That there is no law under which petitioner can be punish*ment* for his alleged offense, and therefore he is restrained of his liberty without due process of law, in violation of the fifth and fourteenth amendments to the Federal Constitution.

*Recapitulation.*

13 Your petitioner represents and shows that his detention, imprisonment, threatened deprivation of life, and all proceedings had and threatened against him are illegal and violative of the fundamental rights and immunities guaranteed by the Constitution of the United States, to wit:

1. There is not and never has been any indictment or presentment of a grand jury found against him, but he has been charged with a capital crime, to wit, murder, held to answer, imprisoned, tried, convicted, sentenced to be hanged, and is now threatened with death under and by virtue of the so-called information, of which said "Exhibit A" is a copy, and not otherwise.

That when the homicide with which your petitioner is charged and when the various proceedings hereinbefore enumerated were had against him there was no law of the State of Idaho authorizing or permitting a prosecution for a felony by information.

That said district court in all of its acts done and threatened, as aforesaid, against your petitioner has been and now is wholly without jurisdiction; that said district court never acquired the right or power to hold, imprison, try, convict, or sentence your petitioner, and considering the premises your petitioner has been and is being unlawfully detained and imprisoned and is threatened with death

without due process of law and in contravention of the fourteenth amendment of the Federal Constitution.

2. All of the laws of the State of Idaho providing for or applicable to the punishment of criminals convicted of capital offenses were repealed and rendered void subsequent to the commission of the offense alleged in said so-called information by an act of the legislature of said State, which was passed, approved, and became the sole law of said State relating to or providing for the punishment of persons sentenced to imprisonment in the State prison or to suffer the death penalty on the 23rd day of February, 1899.

That said last-mentioned act and law imposes different and additional penalties and punisl ment from those provided by the laws in force when the crime charged against your petitioner is alleged
14 to have been committed, deprives your petitioner of rights and privileges which he had at such time, and changes the manner and character of punishment to his prejudice, and therefore

Said act is, as to your petitioner, *ex post facto* and contrary to the provisions of sections 9 and 10 of art. 1 of the Federal Constitution.

That said district court is without jurisdiction to sentence or punish your petitioner either under the laws in force when said crime so charged is alleged to have been committed, because all of said laws have been repealed and no longer exist, or under said new law, because said law, as to your petitioner, is *ex post facto* and therefore inoperative and void.

Wherefore, to be relieved from said unlawful detention and imprisonment and to be released from custody, your petitioner prays that a writ of *habeas corpus*, to be directed to J. E. Burke, sheriff of Cassia county, in the State of Idaho, may issue in this behalf, so that your petitioner may be brought before this court to do, submit to, and receive what the law may direct.

JACK DAVIS,
*Petitioner in propria persona.*

J. H. HAWLEY,
J. W. DORSEY, AND
HAWLEY, PUCKETT & HAWLEY,
*Of Counsel for Petitioner.*

STATE OF IDAHO, } ss:
*County of Cassia,* }

Jack Davis, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition subscribed by him; that he has read the same and knows the contents thereof, and the statements therein made are true, as he verily believes.

JACK DAVIS.

Subscribed and sworn to before me this 26th day of March, 1900.

[SEAL.]

JOHN F. HANSEN,
*Clerk of the District Court,*
By FRANK RIBLETT, *Dep-ty.*

15 "EXHIBIT A."

In the District Court of the Fourth Judicial District of the State of Idaho in and for Cassia County.

STATE OF IDAHO, Plaintiff,
*vs.*
JACK DAVIS, alias DIAMONDFIELD JACK, alias FRANK WOODSON, Defendant.

*Information.*

In the District Court of the Fourth Judicial District of the States of Idaho, Sitting in and for Cassia County, April Term, A. D. 1897.

Jack Davis, alias Diamondfield Jack, alias Frank Woodson, is accused by the district attorney of the fourth judicial district of the State of Idaho by this information of the crime of murder, committed as follows, to wit: That said Jack Davis, alias Diamondfield Jack, alias Frank Woodson, on the sixth day of February, A. D. 1896, in the county of Cassia, State of Idaho, in and upon one John C. Wilson did feloniously, wilfully, unlawfully, deliberately, premeditatedly, and of his malice aforethought make an assault *and* a certain pistol, to wit, a revolver, which said revolver was then and there loaded with gunpowder and leaden bullets, and which said revolver him, the said Jack Davis, alias Diamondfield Jack, alias Frank Woodson, in his right hand then and there had and held, wilfully, feloniously, unlawfully, deliberately, premeditatedly, and of his malice aforethought and with the intent him, the said John C. Wilson, then and there to kill and murder did then and there shoot off and discharge at, against, and upon him, the said John C. Wilson, inflicting then and there and thereby upon the body of him, the said John C. Wilson, one mortal wound, of which said mortal wound inflicted, as aforesaid, him, the said John C. Wilson, then
16 and there died, whereby at the time and in the manner and form aforesaid the said Jack Davis, alias Diamondfield Jack, alias Frank Woodson, did unlawfully, wilfully, feloniously, deliberately, premeditatedly, and of his deliberately premeditated malice aforethought shoot, kill, and murder said John C. Wilson, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Idaho.

That after the commission of said offense and before the filing of this information, to wit, on the tenth day of March, A. D. 1897, said Jack Davis, alias Diamondfield Jack, alias Frank Woodson, was arraigned upon said charge before W. L. Pierson, a justice of the peace in and for Albion precinct, Cassia county, State of Idaho, and a preliminary examination upon said charge was then and there waived by him, the said Jack Davis, alias Diamondfield Jack, alias Frank Woodson, and then and there the said Jack Davis, alias Diamondfield Jack, alias Frank Woodson, was held by said justice of the peace to answer the same in this court and was duly committed.

JOHN C. ROGERS,
*District Attorney.*

Names of witnesses known to said district attorney at the time of filing this information:

Henry Harris, Edgar Severe, P. D. Bell, J. W. Walker, Lowell Wilson, Jabez Durfee, Ed. Samuelson, Charles Parkinson, Henry Foxley, Adam M. Paul, William Majors, Richard O'Neal, Van Irons, William Thompson, John Boundy, D. D. Merritt, C. B. Moore, William A. Tolman, Bert Lee, Joel Sanders, Thomas E. Harper, William Trotter, Dr. R. T. Story, William Quin, Hervey Tranmer, Frank Smith, Aaron Critchfield, Joseph Wilson, E. R. Daley, C. T. Robinson, James O'Neal, Francis M. Cummins, Charles Edwards, Harvey L. Perkins, J. E. Bower, O. P. Anderson, Sandy Gee, Mrs. Aaron Critchfield, William Cramer, Alice Woods, Chester Dwight, Charles O'Neal, William Vail, James Dunn, Joseph McMurray, Mrs. Chas. Thompson, Hyrum Severe, William Drake, Chas. Ecklund,
17 Fred Wilson, Davis Hunter, Jessie Wilson, Oliver Dunn, Charles Thompson, J. J. Gray, Ed. Thompson, Geo. T. Porter, William Orr, Benj. Darrh, Heman Hunter, S. J. Nutt.

(Endorse:) Information. (Title of court and cause.) Filed in open court this fifth day of April, 1897. John F. Hanson, clerk.

STATE OF IDAHO, } ss:
*County of Cassia,* }

I, John F. Hansen, clerk of the district court of the fourth judicial district of the State of Idaho in and for the county of Cassia, do hereby certify that the foregoing is a full, true, correct, and complete transcript and copy of the original information in the case of The State of Idaho *v.* Jack Davis, filed in my office on the 5th day of April, 1897.

Witness my hand and the seal of the said district court this 26th day of March, 1900.

JOHN F. HANSEN,
*Clerk of the District Court, Fourth Judicial District, State of Idaho,*
By FRANK RIBLETT, *Dep-ty.*

[SEAL.]

(Stamp.)

18 "EXHIBIT B."

In the District Court of the Fourth Judicial District of the State of Idaho in and for Cassia County.

STATE OF IDAHO, Plaintiff,
*vs.*
JACK DAVIS, alias DIAMONDFIELD JACK, alias FRANK WOODSON, Defendant.

*Judgment and Commitment.*

Now, on this twenty-fourth day of April, 1897, the district attorney and the defendant and his counsel, Hawley & Puckett and K. I. Perky, Esqrs., came into court. The defendant was duly in-

formed by the court of the nature of the charge against him, for the crime of murder committed on the sixth day of February, 1896, of the information filed against him, his arraignment and plea of not guilty of the offense charged in the information, of his trial and the verdict of the jury on the fifteenth day of April, 1897, "Guilty of murder in the first degree, as charged in the information," and the defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none; and no sufficient cause being shown or appearing to the court, therefore the court rendered its judgment as follows: That whereas the said Jack Davis having been duly convicted in this court of the crime of murder in the first degree, it is therefore ordered, adjudged, and decreed by the court that the said Jack Davis be punished by death, and that he be remanded to the custody of the sheriff of Cassia county, State of Idaho, there to be retained in his custody until the fourth day of June, A. D. 1897, at which time the said sheriff shall take the said Jack Davis, either within the walls or yard of said jail of said Cassia county or some convenient and private place within said county of Cassia and
19 State of Idaho, and hang said Jack Davis by the neck until he is dead.

C. O. STOCKSLAGER,
*Judge Fourth Judicial District.*

(Endorsed:) (Title of court and cause.) Judgment and commitment. Filed April 24th, 1897. John F. Hansen, clerk.

STATE OF IDAHO, } ss:
*County of Cassia,* }

I, John F. Hansen, clerk of the district court of the fourth judicial district of the State of Idaho in and for the county of Cassia, do hereby certify that the foregoing is a full, true, correct, and complete transcript and copy of the original judgment and commitment in the case of The State of Idaho *v.* Jack Davis, now on file in my office.

Witness my hand and the seal of the said district court this 26 day of March, 1900.

JOHN F. HANSEN,
*Clerk of the District Court, Fourth Judicial District, State of Idaho,*
[SEAL.] By FRANK RIBLETT, *Dep'ty.*

(Stamp.)

20 "EXHIBIT C."

In the District Court of the Fourth Judicial District of the State of Idaho in and for Cassia County.

STATE OF IDAHO, Plaintiff,
*vs.*
JACK DAVIS, Defendant.

*Resentence and Death Warrant.*

Whereas, on the tenth day of March, A. D. 1897, said Jack Davis was, upon a complaint duly sworn to, made, and filed, charged before W. L. Pierson, justice of the peace in and for Albion precinct, Cassia county, State of Idaho, with the crime of murder, in that he, the said Jack Davis, wilfully, feloniously, unlawfully, deliberately, premeditatedly, and of his own malice aforethought did kill and murder one John C. Wilson in the county of Cassia, State of Idaho, on the sixth day of February, A. D. 1896;

And whereas, on said tenth day of March, A. D. 1897, and after the commission of the said offense, as aforesaid, and before the filing of the information in said case, the said Jack Davis was arraigned upon said charge by said justice of the peace, and the preliminary examination upon said charge was then and there waived by him, the said Jack Davis, and then and there the said Jack Davis was held by the said justice of the peace to answer said charge in the district court of the fourth judicial district of the State of Idaho and was duly committed;

And whereas there was filed in open court in the district court in and for Cassia county, in the State of Idaho, on the fifth day of April, A. D. 1897, the same being the April term of the said court, duly and regularly appointed, had, and held, an information
21 against him, the said Jack Davis, which said information was duly signed by the district attorney in and for the county of Cassia, and charged and accused the said Jack Davis with having committed the crime of murder in the first degree, in that he, the said Jack Davis, on the sixth day of February, A. D. 1896, in the county of Cassia, State of Idaho, did unlawfully, feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought kill and murder one John C. Wilson, contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the State of Idaho;

And whereas, on the fifth day of April, 1897, said defendant was duly arraigned in court and said information was duly read to the said defendant and he was furnished with a copy thereof, and, on being asked by the court, stated that his true name was Jack Davis, and said court then ordered that all proceedings in said cause against said defendant be had in the name of Jack Davis, and the said defendant being fully advised in the premises and of the nature of said information, and then and there, on the fifth day of April, A. D. 1897, entered his plea of not guilty of the charge in the said information contained;

And whereas, on the seventh day of April, A. D. 1897, the said information and charge against the defendant was brought on for trial, and said defendant, being then and there duly represented in court by his counsel, Hawley & Puckett and K. I. Perky, and the said State of Idaho appearing by its counsel, Hon. J. C. Rogers, district attorney, and his assistants, W. E. Borah and O. W. Powers, Esqrs., and, said defendant having announced that he was ready for trial, a jury was duly and regularly chosen and empaneled to try said cause, and said cause was proceeded with from day to day up to and until the fifteenth day of April, 1897, and the evidence being then closed and the arguments of counsel having been made, and the court having charged the jury and the jury retired in the charge of the officers of the court for that purpose duly selected and
22 sworn, retired from the court, and, after having been absent for a time, returned into court and rendered their verdict against the said defendant, Jack Davis, of guilty of murder in the first degree, as charged in the information aforesaid;

And whereas, on the twenty-fourth day of April, A. D. 1897, said defendant, Jack Davis, having been brought into court for the purpose of judgment and sentence, and said defendant being there in open court represented by his counsel, Hawley & Puckett and K. I. Perky, and the State of Idaho being represented by the district attorney in and for the county of Cassia and district aforesaid, and the defendant having been then and there duly informed by the court of the nature of the charge against him as in said information contained, in that he committed the crime of murder on the sixth day of February, 1896, and the said defendant being also informed of his arraignment and plea of not guilty of the offense charged in the information, of his trial, and the verdict of the jury made and rendered on the fifteenth day of April, A. D. 1897, finding him, the said defendant, guilty of murder in the first degree, as charged in the information, and the said defendant having been then and there asked if he had any legal cause to show why judgment should not be pronounced against him, and he, the said defendant, Jack Davis, replying that he had none, and no sufficient cause being then and there shown or appearing to the court, thereupon said court rendered its judgment and sentence as follows, to wit:

That whereas the said Jack Davis having been duly convicted in this court of the crime of murder in the first degree, it is therefore ordered, adjudged, and decreed by the court that the said Jack Davis be punished by death, and that he be remanded to the sheriff of the county of Cassia, of the State of Idaho, there to be retained in the custody of the said sheriff until the fourth day of June, A. D. 1897, at which time said sheriff shall take said Jack Davis, either
23 within the walls of the yard of the jail of the said county of Cassia or to some convenient and private place within the said county of Cassia and State of Idaho, and then and there on said day hang said Jack Davis by the neck until dead.

And whereas thereafter and on the first day of May, 1897, a motion for a new trial was duly filed in said district court, and afterward, to wit, on the sixth day of January, A. D. 1898, was heard, considered, and overruled by said court, and thereafter, to wit, on

the eighteenth day of January, 1898, an appeal was perfected to the supreme court of the State of Idaho, and thereafter, to wit, on the fourteenth day of June, A. D. 1898, a remittitur from the supreme court of the State of Idaho was filed with the clerk of this court to the effect that the judgment and the order denying the defendant a new trial by the court below be affirmed, and thereafter, to wit, on the fourteenth day of July, A. D. 1898, a second remittitur was filed from the supreme court of the State of Idaho with the clerk of this court denying the petition of appellant for a rehearing of the above-entitled cause;

And thereafter, to wit, on the thirteenth day of September, A. D. 1898, it being the regular September term of the district court in and for said Cassia county, the time for sentence of the defendant, Jack Davis, for the crime, as aforesaid, was by said court fixed for Friday, the sixteenth day of September, A. D. 1898, at 1.30 o'clock p. m., and at said time said defendant was brought into court, the district attorney, John C. Rogers, and K. I. Perky and W. H. Puckett, counsel for the defendant, being present, the defendant, Jack Davis, was asked if he had any legal cause to show why judgment should not be pronounced against him, who nothing further sayeth unless as he before hath sayeth, and no legal cause or reason appearing to the court, thereupon the court rendered its judgment and sentence as follows, to wit:

That whereas the said Jack Davis having been duly convicted in this court of the crime of murder in the first degree, it is therefore ordered, adjudged, and decreed by the court that the said
24 Jack Davis be punished by death, and that he be remanded to the sheriff of the county of Cassia, of the State of Idaho, there to be retained in the custody of the said sheriff until the twenty-eighth day of October, A. D. 1898, at which time said sheriff shall take the said Jack Davis, either within the walls of the yard of the jail of said Cassia county or to some convenient or private place within said Cassia county and State of Idaho, and then and there on said day hang the said Jack Davis by the neck until dead.

And therefore you, the said sheriff of the said county of Cassia, in the State of Idaho, are hereby commanded to take said Jack Davis on the twenty-eighth day of October, A. D. 1898, within the walls of the yard of the jail of said county of Cassia and State of Idaho or at your convenience to some convenient and private place within said county of Cassia and State of Idaho, and thereupon and on the said twenty-eight- day of October, A. D. 1898, hang the said Jack Davis by the neck until he, the said Jack Davis, shall be dead; and thereupon you, the said sheriff, shall duly make due returns of all your actions and doings in the premises, and this shall be your warrant and authority therefor.

C. O. STOCKSLAGER.
*District Judge Fourth Judicial District of Idaho.*

Attest:

[SEAL.] JOHN F. HANSEN,
*Clerk District Court.*

Dated this twenty-second day of September, A. D. 1898.

25 STATE OF IDAHO, } ss:
*County of Cassia,* }

I, John F. Hansen, clerk of the district court of the fourth judicial district of the State of Idaho in and for the county of Cassia, do hereby certify that the foregoing is a full, true, correct, and complete transcript and copy of the original resentence and death warrant in the case of The State of Idaho *v.* Jack Davis, now on file in my office.

Witness my hand and the seal of the said district court this 26 day of March, 1900.

JOHN F. HANSEN,
*Clerk of the District Court, Fourth Judicial District, State of Idaho.*
[SEAL.] By FRANK RIBLETT, *Dep'ty.*

(Stamps.)

26 "EXHIBIT D."

*House and Senate Journal Entries of House Bill No. 33.*

An act to provide for prosecuting offenses on information and to dispense with the calling of grand juries, except by order of the district judges. Passed at the first—1890-'91—session of the legislature of the State of Idaho.

*House Record.*

Pages 128 and 129, January 7, 1891.

*Introduction of Bills, Joint Resolutions, and Memorials.*

Mr. Briggs introduced house bill No. 33, "An act to provide for prosecuting offenses on information and to dispense with the calling of grand juries except by order of the district judges."

Page 131.

*First Reading of House Bills.*

—— and house bill No. 33, by Briggs, "An act to provide for prosecuting offenses on information and to dispense with the calling of grand juries except by order of the district judges," read first time.

Pages 146, January 8, 1891.

*Second Reading of House Bills, Joint Resolutions, and Memorials.*

House bill No. 33, by Briggs, "An act to provide for prosecuting offenses on information and to dispense with the calling of grand juries except by order of the district judges," was read second time, ordered printed, and referred to the committee on judiciary.

Pages 169, January 12, 1891.

Mr. Steunenberg, from the committee on printing, submitted the following report:

27 Mr. SPEAKER: The committee on printing respectfully reports that it has had printed one hundred and fifty copies *each* of house bills Nos. 33, and herewith submit the original bills.

STEUNENBERG, *Chairman.*

Page 450, March 2, 1891.

*Reports of Standing Committees.*

Mr. Price, from the committee on judiciary, reported back house bill No. 33 with favorable recommendation. The bill was ordered engrossed and passed to third reading.

Page 455, March 3, 1891.

Mr. Steunenberg, from the committee on engrossment, reported house bill No. 33 correctly engrossed.

Page 456.

*Third Reading of House Bill, J. R., & M.*

House bill No. 33 was read third time. Question being, Shall the bill pass? the ayes and nays were taken with the following result: Ayes—Armstrong, Ballentine, Briggs, Caldwell, Casey, Dryden, Emery, Ethel, Frederickson, Goodnight, Green, Hawkins, Irwin, Jones, King, Martin, Merrill, Mills, Munro, Price, Pyeatt, Ramsey, Skattaboe, Smith, W. H. Smith, B. N. Sperry, Steunenberg, Suydam, Swanger, and Mr. Speaker—30; nays—Mr. Lyon—1. The bill passed with title approved.

Page 468, March 4, 1891.

Office of the secretary of the senate.

BOISÉ CITY, IDAHO, *March* 4, 1891.

Mr. SPEAKER: I am instructed to inform your honorable body that the senate has had under consideration and passed with amendments house bill No. 33, "An act to provide for prosecuting offenses on information and to dispense with the calling of grand juries except by order of the district judges," herewith transmitted.

28 Respectfully, M. C. ATHEY, *Sec.*

Page 471.

Mr. Briggs asked unanimous consent to take up house bill No. 33, which was agreed to.

The house having under consideration house bill No. 33, with the senate amendment thereto—

Mr. Briggs moved that the house do not concur in the amendment; that ayes and nays were taken with the following result:

Ayes—Messrs. Briggs, Emery, Frederickson, Goodnight, Hawkins, Irwin, Jones, King, Lyon, Martin, Merrill, Price, Ramsey, Smith, W. H. Sperry, Steunenberg, Suydam, Swanger, and Mr. Speaker—19; nays—Messrs. Ballentine and Green—2.

And so the amendment was disagreed to.

Pages 466 and 467, March 5, 1891.

Office of the secretary of the senate.

BOISÉ CITY, IDAHO, *March* 5, 1891.

Mr. SPEAKER: I am instructed to inform your honorable body that the senate has refused to recede from its amendment to house bill No. 33, "An act to provide for prosecuting offenses on information and to dispense with the calling of grand juries except by order of the district judges," and asks for a committee of conference to confer upon the difference between the two houses relating to said amendment.

Respectfully, M. C. ATHEY, *Sec.*

Pages 479, March 6, 1891.

The speaker appointed the judiciary committee as a committee of conference on the part of the house to confer with a like committee from the senate upon house bill No. 33.

29 Page 529, March 11, 1891.

Mr. Price, from the committee on conference, recommended that the senate amendment to house bill No. 33 be concurred in.

The amendment was concurred in.

Page 535, March 12, 1891.

The speaker announced that he was about to sign house bill No. 33.

Page 544, March 13, 1891.

Mr. Caldwell, from the committee on enrollment, reported house bill No. 33 correctly enrolled, and that the same was presented to the governor for his approval at 2.5 o'clock p. m., March 12, 1891.

*Senate Record.*

Page 91, March 3, 1891.

*Message from the House.*

Office of chief clerk of house of representatives.

BOISÉ CITY, IDAHO, *March* 3, 1891.

Mr. PRESIDENT: I am instructed to inform your honorable body that the house of representatives has had under consideration and passed house bill No. 33, "An act to provide for prosecuting offenses on information and to dispense with the calling of grand juries

except by order of the district judges," which is herewith transmitted.

Respectfully, CHAS. H. REED,
*Chief Clerk.*

Page 93.

House bill No 33 was read first time and referred to the committee on judiciary.

Page 97, March 4, 1891.

*Reports of Standing Committees.*

Mr. Wing, from the committee on judiciary, made the following report:

Mr. PRESIDENT: The judiciary committee has had under consideration house bill No. 33 and return the same herewith with amendment, and would recommend that the same do pass as amended.

WING, *Chairman.*

Pages 98 and 99.

*Second Reading of Bills.*

House bill No. 33 was taken up.

Mr. Wing moved that section 3 be amended by striking out the words "different offenses and different degrees of the same offenses may be joined in on information in all cases where the same might by different courts in one indictment," which motion prevailed.

Mr. Finch moved that the rules be suspended, the bill read a second and third time, and placed upon its final passage.

Roll-call.

Those voting in the affirmative were Messrs. Branstetter, De Lamar, Dempsey, Finch, Gunn, Jewell, Rogers, Shoup, Smith, Weiler, Wells, White, Wing, and Mr. President—14.

Negative—none.

Absent—Messrs. Brigham, Langrishe, McPherson, and Underwood—4.

So the rules were suspended; the bill was read the second and third time and placed upon its final passage.

The question being, "Shall this house bill pass?"

It was decided as follows:

Roll-call.

Those voting in the affirmative were Messrs. Branstetter, Delamar, Dempsey, Finch, Gunn, Jewell, Rogers, Shoup, Smith, Weiler, Wells, White, and Wing—13.

Negative—Mr. President—1.

Absent—Messrs. Brigham, Langrishe, McPherson, and Underwood—4.

So the bill passed, and the title was approved.

Pages 115 and 116, March 5, 1891.

*Message from the House.*

Office of chief clerk of the house of representatives.

31 BOISÉ CITY, IDAHO, *March* 5, 1891.

MR. PRESIDENT: I am instructed to inform your honorable body that the house of representatives has refused to concur in senate amendments to house bill No. 33, "An act prosecuting offenses on information and to dispense with the calling of grand juries except by order of the district judges."

Respectfully, CHAS. H. REED,
*Chief Clerk.*

Page 121.

Mr. Finch moved that the senate insist on its amendment and ask for a conference committee.

Which motion prevailed.

Pages 130 and 131, March 6, 1891.

*Message from the House.*

Office of chief clerk of the house of representatives.

BOISÉ CITY, IDAHO, *March* 6, 1891.

MR. PRESIDENT: I am instructed to inform your honorable body that the speaker has appointed Messrs. Price, Ramsey, and Steunenberg as a conference committee on the part of the house in reference to house bill No. 33, "An act to provide for prosecuting offenses on information and to dispense with the calling of grand juries except by order of the district judge."

Respectfully, CHAS. H. REED,
*Chief Clerk.*

Pages 173 and 174, March 11, 1891.

*Message from the House.*

Office of the chief clerk of the house of representatives.

BOISÉ CITY, IDAHO, *March* 11, 1891.

MR. PRESIDENT: I am instructed to inform your honorable body that the house of representatives has concurred in senate
32 amendment to house bill No. 33, "An act to provide for prosecuting offenses on information and to dispense with calling of grand juries, except by order of district judge."

Respectfully, CHAS. H. REED,
*Chief Clerk.*

Pages 186, March 12, 1891.

At 2.10 o'clock Mr. President announced that he was about to sign house bill No. 33 "An act to provide for prosecuting offenses on in-

formation and to dispense with the calling of grand juries except by order of the district judges."

Pages 207, March 13, 1891.

*Message from the House.*

Office of chief clerk of the house of representatives.

BOISÉ CITY, IDAHO, *March* 13, 1891.

Mr. PRESIDENT: I am instructed to inform your honorable body that the governor has this day approved house bill No. 33, "An act to provide for prosecuting offenses on information and to dispense with the calling of grand juries except by order of the district judges."

Respectfully, CHAS. H. REED,
*Chief Clerk.*

33 Executive department, office of secretary of state, Boisé City, State of Idaho.

I, M. Patrie, secretary of the State of Idaho, do hereby certify that the foregoing and annexed is a full, true, correct, and complete transcript and copy of all journal entries of both houses of the legislature of the State of Idaho relating to house bill No. 33, to wit, of all house and senate journal entries relating to the act of said legislature, entitled:

"An act to provide for prosecuting offenses on information and to dispense with the calling of grand juries except by order of the district judges."

Which passed the house of representatives March 3rd, 1891.

Which passed the senate March 4th, 1891.

Which was approved by the governor of said State March 13, 1891, and

Which was filed in the office of the secretary of said State, to wit, this office, on the 14th day of March, 1891, and then admitted to record.

In testimony whereof I have hereunto set my hand and affixed the great seal of said State.

Done at Boisé City, the capital of Idaho, this 27th day of March, 1900.

[SEAL.]

M. PATRIE,
*Secretary of State,*
By W. H. GIBSON,
*Chief Clerk.*

Endorsed: No. 181. Circuit court, ninth circuit, district of Idaho. In the matter of the application for a writ of *habeas corpus.* Petition for a writ of *habeas corpus.* Filed April 2nd, 1900. A. L. Richardson, clerk. J. W. Dorsey and J. H. Hawley; Hawley, Puckett, and Hawley, attorneys for petitioner.

34 *Rule to Show Cause.*

In the Circuit Court of the United States in and for the Ninth Circuit and District of Idaho.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus.*

Rule to show cause.

On reading the petition of Jack Davis, the applicant in the above-entitled matter, filed herein on the 2nd day of April, 1900, wherein it is alleged and shown that said Jack Davis has been deprived of his liberty and is in custody and threatened with deprivation of life without due process of law and contrary to the Constitution of the United States, wherefore, good cause appearing—

It is ordered that J. E. Burke, who as sheriff of Cassia county, State of Idaho, now holds, imprisons, and detains, as it is said, the said Jack Davis, and B. F. Howell, the county attorney of said Cassia county, and S. H. Hays, the attorney general of said State of Idaho, appear and show cause, if any they have, before the above-entitled court, at its court-room, at Boisé City, State of Idaho, on Monday, the 2nd day of April, A. D. 1900, at the hour of 2 o'clock in the p. m. of said day, or as soon thereafter as counsel can be heard, why a writ of *habeas corpus* in the above-entitled application should not issue as therein prayed and why said Jack Davis should not be released from custody and restored to liberty.

It is further ordered that until the final determination of the foregoing application all further proceedings against said Jack Davis be stayed, and that copy of this order be served upon said J. E. Burke, B. F. Howell, and S. M. Hays.

Done in open court this 2nd day of April, 1900.

JAS. H. BEATTY, *Judge.*

Endorsed: No. 181. In the circuit court of the United States in and for the ninth district and circuit of Idaho. In the matter of the application of Jack Davis for a writ of *habeas corpus.* Rule to show cause. Filed April 2nd, 1900. A. L. Richardson, clerk.

35 *Answer.*

In the Circuit Court of the United States in and for the Ninth Circuit and District of Idaho.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus.*

Answer to rule to show cause.

To the honorable circuit court of the United States, ninth circuit, in and for the Idaho central division thereof:

Comes now Samuel H. Hays, attorney general of the State of Idaho, appearing for and on behalf of B. F. Howells, county attorney of

Cassia county; J. F. Burke, sheriff of Cassia county, and in his own behalf, and with him W. E. Borah, Esq., attorney for the aforesaid parties, and, answering the rule to show cause heretofore issued herein, says:

1. That said Jack Davis was informed against, tried, convicted, sentenced, and proceeded against, as set forth in the petition herein, and is now in the custody of the said J. F. Burke, sheriff aforesaid, awaiting the order of the district court of the fourth judicial district of the State of Idaho in and for Cassia county.

2. That at the November, 1899, term of the supreme court of the State of Idaho said J. F. Burke, sheriff of Cassia county, as aforesaid, filed his petition in said court, claiming the custody of said Jack Davis pending the execution of the death penalty, and asked that a writ of *habeas corpus* be directed to the warden of the penitentiary of the State of Idaho, directing him to deliver the said Jack Davis into the custody of the said J. F. Burke, sheriff, as aforesaid; that said supreme court of the State of Idaho filed its opinion in said matter on the 22nd day of December, 1899, a copy of which said opinion is hereto attached and made a part hereof and marked "Exhibit A."

3. That the act referred to in the petition herein, entitled
36 "An act for prosecuting offenses on information and to dispense with the calling of grand juries except by order of the district judge," approved March 13th, 1891, has been ever since said time treated and accepted by the courts and the people of the State as a valid and binding law of said State.

Wherefore we ask that the said writ be by the court denied.

SAMUEL H. HAYS,
*Attorney General,*
W. E. BORAH,
*Attorneys for J. F. Burke, Sheriff; B. F. Howells, County Attorney; Samuel H. Hays, Attorney General.*

37 EXHIBIT "A."

Filed Dec. 22nd, 1899.

In the Supreme Court of the State of Idaho, November Term, 1899.

*In re* JACK DAVIS. Original Application for a Writ of *Habeas Corpus* by the Sheriff of Cassia County to Recover the Custody of Jack Davis. Sol. Hasbrouck, Clerk.

Writ of mandate—Custody of prisoner—Criminal law—Sentence—*Ex post facto* law—Changing place of executing judgment.

1. The provision of section 159, R. S. 1887, is intended as and is a general saving clause to penal statutes, amendatory and otherwise, and continues in force a statute as it existed as to all offenses committed prior to repeal, and a person convicted of an offense and sentenced to death prior to repeal must be punished under the law as it existed at the time of the commission of the offense.

2. Act of February 18, 1899 (Session Laws 1899, p. 340), amending certain sections of the Revised Statutes 1887, regulating the time, place, and manner of inflicting the death penalty, construed with section 159, R. S., is not applicable to past offenses, and is prospective only in its operation.

(Syllabus by the court.)

Original application to this court by sheriff of Cassia county for writ of *habeas corpus* for the purpose of obtaining the custody of one Davis, who was resting under the death sentence. Writ granted.

W. E. Borah, for petitioner.
S. H. Hays, attorney general, for Warden Hailey.
Hawley & Puckett, *amicus curiæ*.

38 SULLIVAN, *J.*:

This is an application for a writ of *habeas corpus* made by J. E. Burke, sheriff of Cassia county, to obtain the custody of one Jack Davis, who was convicted of the crime of murder and sentenced to be hung therefor. Said sentence was stayed pending an appeal to this court, which appeal was decided against said Davis, and thereafter his execution was fixed for February 1st, 1899. Thereafter, upon application for a writ of *habeas corpus* to the Federal court, execution was stayed until an appeal to the Federal court should be determined. On February 18, 1899, the legislature of Idaho passed an act providing that the execution of all persons on whom the penalty of death was imposed should be within the walls of the penitentiary; that thereafter the sheriff of said Cassia county delivered said Davis to the warden of the State penitentiary, at Boise City, Idaho.

By his petition he asks that the said Davis be restored to his custody so that the sentence of the law may be carried out, provided the appeal which is now pending in the circuit court of appeals, ninth circuit, shall be decided against said Davis.

When Davis was convicted and judgment of death passed upon him section 8021, Revised Statutes, read as follows:

"SECTION 8021. The judgment of death must be executed within the walls or yard of a jail or some convenient private place in the county. The sheriff of the county must be present at the execution, and must invite the presence of a physician, the district attorney of the county, and at least twelve reputable citizens, to be selected by him, and he shall at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution,

nor can any person under age be allowed to witness the *the*
39 same."

Thereafter, on February 18, 1899, said section 8021 was amended (see Session Laws 1899, p. 342) to read as follows:

"SECTION 8021. The State prison board of the State, at the expense of the State of Idaho, shall provide a suitable room or place, closed from public view within the walls of the State penitentiary and therein erect and construct the necessary scaffolding, traps and appliances requisite for carrying into execution the death penalty; and the punishment of death must, when pronounced by sentence in this State, in each and every case, be inflicted by the warden, in the State penitentiary, in the room or place, and with the appliances aforesaid, by hanging said convict by the neck until he shall be dead."

The question involved in this case is, under which law must the judgment against Davis be carried into execution? Whether under the provisions of said section 8021 before amendment or under its provisions after amendment. So far as the provisions of said section, as amended, are concerned, the Supreme Court of the United States in the case of *In re* Medley, 134 U. S., 855, held that such a law is *ex post facto* as to crimes committed prior to its passage, since it changes the punishment in such a material degree as to come within the inhibition of the provisions of the Federal Constitution. This being a Federal question, the decision of that court must be accepted as final. Therefore the execution of said judgment cannot be performed by the warden of the State penitentiary, and the warden has no right to the custody of said Davis.

The question then arises, did the amendment of said section 8021 repeal its provisions as to the execution of the death sentence as they existed prior to the amendment, and thus leave no law under which said sentence may be executed and because thereof permit Davis to escape the judgment pronounced against him? Otherwise to pardon him by legislation.

It certainly was not the intention of the legislature by said amendatory act to make a general gaol delivery of all prisoners
40 upon whom the death sentence had been passed and not carried into execution at the date of said amendment.

Said amendatory act has attached thereto the usual repealing clause declaring that "all acts and parts of acts in conflict with this act are hereby repealed."

It is contended by Messrs. Hawley & Puckett, who appear as friends of the court, that said amendatory act, amending certain sections of the Revised Statutes, approved February 18, 1899 (see Session Laws 1899, p. 340), repeals the former provisions of said sections so amended relating to the incarceration, punishment, and execution of persons condemned to death, and for that reason under the rule laid down in *In re* Medley, *supra*, there is no law by which the judgment against Davis can be executed, while counsel for the petitioner contends that section 159, Revised Statutes 1887, is a general saving clause for all criminal statutes such as those under consideration, and that by reason thereof the amendatory act did not repeal

the old law relative to the manner, time, and place of the execution of the death penalty. Said section 159 is as follows:

"SEC. 159. The repeal of any law creating a criminal offense does not constitute a bar to the indictment and punishment of an act already committed in violation of the law so repealed, unless the intention to bar such indictment and punishment is expressly declared in the repealing act."

The evident purpose of that statute was and is to prevent the escape from punishment of those charged with or convicted of crime where a change is made by amendment of the statute then in force, either in the quality of the crime or in the punishment thereof when the amended statute is to go into effect before the completion of the punishment imposed. Said section 159 was copied from the Penal Code of California, section 329, and that section has been construed by the supreme court of that State in People *vs.* McNulty, 93 Cal., 427, as a general saving clause, and under it a person who has been convicted of an offense must be punished under the law
41 as it existed at the time of the commission of the offense, though the clause of the act prescribing the punishment has since been repealed by an amendment, which increases the punishment. In People *vs.* Vincent, 30 Pac. Rep., the court cites with approval The People *vs.* McNulty, *supra*.

Those decisions have been approved by the Supreme Court of the United States.

McNulty *v.* People, 149 U. S., 882.
Vincent *v.* People, 149 U. S., 123.
See also State *v.* Smith, 64 N. W. Rep., 1022.

Upon both reason and principle, we think the rule laid down in those cases correct when applied to the construction of the provisions of said section 159.

The amendments as made by said act do not apply to convictions for offenses committed before their enactment, and are not applicable to past offenses and are prospective only in their operation.

Under the facts of this case as supplemented by the provisions of section 8360, R. S., which is as follows:

"SEC. 8360. In cases where any party is held under illegal restraint or custody or any other person is entitled to the restraint or custody of such party, the judge or court may order such party to be committed to the restraint or custody of such person as is by law entitled thereto"—

The petitioner, as sheriff of said Cassia county, is entitled to the custody of said Davis. Under the law as it was before it was amended said sheriff was the legal custodian of said Davis until the judgment of the court has been executed, and as said law was not changed as to Davis, the sheriff remains his legal custodian and is now entitled to his custody.

It is therefore ordered that said Jack Davis be committed to the custody of the petitioner, J. E. Burke, sheriff of Cassia county, to be dealt with according to law and the authority of the court having jurisdiction in the premises.

Huston, C. J., and Quarles, J., concur.

42 Supreme Court of the State of Idaho, November Term, 1899.

*In re* JACK DAVIS.

I, Sol. Hasbrouck, clerk of the supreme court of the State of Idaho, do hereby certify that the preceding and annexed contains a true and correct copy of the original opinion in the above-entitled cause, on the 22nd day of December, A. D. 1899, and now on file in my office.

Witness my hand and the seal of the court this 31 day of March, 1900.

[SEAL.] SOL. HASBROUCK, *Clerk.*

Endorsed: No. 181. In U. S. circuit court, district of Idaho, central division. *In re* petition of Jack Davis for writ of *habeas corpus.* Answer to rule. Filed April 2nd, 1900. A. L. Richardson, clerk.

43 *Order.*

In the Circuit Court of the United States in and for the Ninth Circuit and District of Idaho, Central Division.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus.*

Order and judgment denying writ and remanding petitioner.

Upon reading the petition of Jack Davis, the applicant in the above-entitled matter, filed herein on the 2nd day of April, 1900, wherein it is alleged that said Jack Davis has been deprived of his liberty and — in custody and is threatened with deprivation of life without due process of law and in violation of the Constitution of the United States, and the rule to show cause thereupon issued and the return thereto, which rule to show cause is directed to J. E. Burke, who, as sheriff of Cassia county, Idaho, now holds in custody, imprisons, and detains said Jack Davis, and to B. F. Howell, as and who is the county attorney of said Cassia county, and to S. H. Hays, as and who is the attorney general of the State of Idaho:

Now, after hearing James H. Hawley, Esq., and J. W. Dorsey, Esq., as counsel for said petitioner, in support of said application for a writ of *habeas corpus* and to discharge said Jack Davis from custody and restore him to liberty, and said S. H. Hays, Esq., the attorney general of said State of Idaho, appearing therefor, and W. E. Borah, Esq., special counsel for said J. E. Burke and of said State, in opposition to said application, and all questions raised by said return and by said petition having been submitted by said counsel to the court for consideration and determination, and the court having duly considered and deliberated and being fully advised in the premises, it is hereby—

Ordered and adjudged that said application for a writ of *habeas corpus* be, and the same is hereby, denied; to which said ruling said counsel for said petitioner excepts and prays that their exception be, and the same is hereby, noted.

44 JAS. H. BEATTY, *Judge.*

Endorsed: No. 181. In the circuit court of the United States in and for the ninth circuit and district of Idaho. In the matter of the application for a writ of *habeas corpus*. Order denying writ. Filed April 2nd, 1900. A. L. Richardson, clerk.

45 *Notice.*

In the Circuit Court of the United States in and for the Ninth Circuit and District of Idaho.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus.*

To the above-entitled court and to S. H. Hays, the attorney general of the State of Idaho:

Please take notice that Jack Davis, the petitioner above named, conceiving himself aggrieved, intends to appeal from the decision, order, and judgment of said court in the above-entitled matter, whereby the application of said Jack Davis for a writ of *habeas corpus* was refused and denied, and does appeal from said decision, order, and judgment to the Supreme Court of the United States.

JAMES H. HAWLEY AND
J. W. DORSEY,
*Attorneys and Counsel for said Jack Davis.*

I acknowledge service hereof this second day of April, 1900.

S. H. HAYS,
*Attorney General of Idaho, and*
W. E. BORAH,
*Attorneys for J. E. Burke, Sheriff.*

Endorsed: No. 181. In the circuit court of the United States in and for the ninth circuit and district of Idaho. Notice of intention to appeal. In the matter of the application of Jack Davis for a writ of *habeas corpus*. Filed April 2nd, 1900. A. L. Richardson, clerk.

46 *Petition.*

In the Circuit Court of the United States in and for the Ninth Circuit and District of the State of Idaho.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus.*

*Petition for Appeal.*

Petition of Jack Davis, the applicant, for a writ of *habeas corpus*, above named, for an order allowing an appeal from the decision, order, and judgment entered in the matter of said application to the Supreme Court of the United States.

Jack Davis, the petitioner and applicant herein, feeling himself aggrieved by the decision, order, and judgment heretofore made and

entered in the matter of said application the 2nd day of April, 1900, whereby it was ordered and adjudged that said application be denied, comes now, by James H. Hawley, Esq., and J. W. Dorsey, Esq., his attorneys and counsel, and petition- this court for an order allowing him to prosecute an appeal from said decision, order, and judgment to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of bond or security which said petitioner shall give and furnish upon said appeal, and that upon the giving of such security all further proceedings against said Jack Davis be suspended and stayed until the hearing and determination of said appeal, and also that a transcript and record of the proceedings and papers upon which said decision, order, and judgment was made, duly authenticated, may be sent to the Supreme Court of the United States. This application is made on the records and files herein and upon the assignments of error herein and herewith filed.

J. W. DORSEY AND
J. H. HAWLEY,
*Attorney- for said Petitioner.*

Approved and allowed as prayed for.

JAS. H. BEATTY, *Judge.*

47 Endorsed: No. 181. In the circuit court of the United States in and for the ninth circuit and district of Idaho. In the matter of the application of Jack Davis for a writ of *habeas corpus*. Petition for appeal. Filed April 2nd, 1900. A. L. Richardson, clerk.

48 *Assignments of Error.*

In the Circuit Court of the United States in and for the Ninth Circuit and District of Idaho.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus.*

Assignments of error.

Now comes Jack Davis, the petitioner above named and appellant herein, by James H. Hawley, Esq., and J. W. Dorsey, Esq., his attorneys, and says that in the record and proceedings herein there is manifest error, in this, to wit:

1st. That there is not and never has been any indictment or presentment of the grand jury against your said petitioner with murder, but he has been charged, held to answer, imprisoned, tried for and convicted of murder and sentenced to be hanged, and is now threatened with death under and by virtue of an information filed in the district court of Cassia county, State of Idaho, on the 5th day of April, 1897, by the district attorney of the fourth judicial district of the State of Idaho, and not otherwise.

(*a.*) That the only authority for so holding, trying, convicting sentencing, imprisoning, and threatening said prisoner which exists lies in section 8 of article 1 of the constitution of said State of Idaho and in a pretended act of the legislature of said State, entitled "An act to provide for prosecuting offenses on information and to dispense with the calling of grand juries except by order of the district judges," approved March 13th, 1897, and herein, 1st, said section of the constitution of the said State is not self-enacting, but required and requires supplementary legislation by the legislature of said State before it could become operative.

2nd. The said pretended act of said legislature, which is called the information act of March 13th, 1891, was and is invalid and void because it was not passed in accordance with the provisions and requirements of the constitution of said State relating to the passage of bills, to wit, section 15 of article 3 of said constitution.

49 (*b.*) That when said petitioner was so held, imprisoned, tried, convicted, and sentenced, or any thereof, there was no law of said State authorizing or permitting prosecutions by information for murder or in any capital case or for any felony whatever.

(*c.*) That in so holding, imprisoning, trying, convicting, and sentencing said petitioner and in each of said acts said district court was without jurisdiction, and all and every of said acts was and is illegal and void.

(*d.*) That said petitioner has been and is being restrained of his liberty and threatened with deprivation of life without due process of law and in violation of the fourteenth amendment of the Constitution of the United States.

(*e.*) That said circuit court erred in holding and deciding that said section 8 of article 1 of the constitution of said State and said information act of March 13th, 1891, or either thereof constituted or constitutes a sufficient authority or any authority for so holding, imprisoning, trying, convicting, sentencing, and threatening said petitioner and for restraining him of his liberty and threatening him with deprivation of life or for any act or proceeding against him in the premises or at all, and herein said circuit court erred in not holding and *holding* that said section of said State constitution is not self-executing, but is dormant until given vitality and force by supplementary and appropriate State legislation, and erred in not holding and deciding that said information act was and is invalid and void because it was not passed in accordance and compliance with the requirements of section 15 of article 3 of the constitution of said State and in not holding and deciding that the constitution of said State alone confers no authority, and the legislature of said State has never provided any procedure, machinery, rules, or method for prosecuting in murder cases or for prosecuting said petitioner or depriving him of his liberty or in anywise proceeding against him by information.

(*f.*) That said circuit court erred in upholding the validity of the authority exercised by said State court and by the said district attorney and by the sheriff of said Cassia county, whereby 50 said petitioner has been and is being restrained of his liberty

and threatened with death by hanging, and in not deciding that said authority and the exercise thereof was and is repugnant to the fourteenth amendment to the Constitution of the United States.

(*g.*) That said circuit court erred in holding and deciding that said petitioner has been duly or legally held, imprisoned, tried, convicted or sentenced, and in holding and deciding that said petitioner has been and is being restrained of his liberty and threatened with death by hanging by and in accordance with the constitution of the State of Idaho and the Constitution of the United States and by due process of law, and in not holding and deciding that said district court in each and every of said steps and proceedings against said petitioner was, is, and must remain wholly without jurisdiction; that said district court has and its officers have acted in contravention of the fourteenth amendment of said Federal Constitution, in that said petitioner has been and is being by said court and said officers denied the equal protection of law and deprived of his liberty and has been sentenced to death and is about to be executed without due process of law.

(*h.*) That said circuit court erred in refusing to grant said petitioner's application for a writ of *habeas corpus* and in not discharging said petitioner from custody and restoring him to liberty.

2nd. Your petitioner says that in the records and proceedings herein there is further manifest error, to wit:

That all of the laws of the State of Idaho providing for or applicable to the punishment of persons convicted of murder and of all persons or criminals convicted or capital offenses or any felony were repealed and rendered void subsequent to the offense imputed to said petitioner and charged against him by said so-called information by an act of the legislature of said State which was passed, approved, and became the law of said State relating to and providing for the punishment and execution of persons convicted and sentenced
51 to imprisonment in the State prison or to suffer death penalty on the 23rd day of February, 1899.

That said act and law of February 23rd, 1899, imposes different and additional penalties and punishments from those provided by the laws of said State in force when the crime charged against said petitioner is alleged to have been committed, deprives said petitioner of rights that he had at said time, and charges the manner and character of punishment then in force to his prejudice.

(*a.*) That said circuit court erred in not holding and deciding that said act and law of February 23rd, 1899, is, as to said petitioner, inoperative, because it is *ex post facto*, and therefore contrary to sections 9 and 10 of article 1 of the Constitution of the United States, as well as section 16 of article 1 of the constitution of the State of Idaho.

(*b.*) That said circuit court erred in not holding and deciding that the laws of said State relating to the punishment of condemned criminals, as aforesaid, have been repealed since the commission of the offense with which said petitioner is charged, no longer exist, and cannot be made operative as to said petitioner for any purpose whatever.

(*c.*) That said circuit court erred in holding that section 159 of the

Revised Statutes of Idaho constitutes and is a general saving clause, the effect of which is to keep alive, as to said petitioner, the laws of said State relating to the punishment of condemned criminals, as aforesaid, which were in force when the homicide imputed to petitioner was committed and which were repealed by said act of February 23, 1899, and in holding that said punishment laws are still in force as to said petitioner, and that he may be restrained of his liberty, deprived of his life, or at all punished thereunder.

(*d.*) That said circuit court erred in not holding that said petitioner cannot be punished under said act of February 23rd, 1899, because it is *ex post facto* as to him, nor under the laws which said act repeals, because there is no saving clause in either said act or in the general laws of the State, and said repealed laws therefore are void.

52 (*e.*) That said circuit court erred in not holding that there is no law of the State of Idaho under which said petitioner can be punished.

(*f.*) That said circuit court erred in not holding that by the passage and enactment of said act of February 23rd, 1899, the said district court lost all jurisdiction to sentence, punish, or further restrain said petitioner of his liberty, and that because of said act said petitioner has been and is deprived of his liberty without due process of law and in violation of the fourteenth amendment of the Constitution of the United States.

(*g.*) That said circuit court erred in refusing to grant the application of petitioner for a writ of *habeas corpus* and in not discharging said petitioner from custody and in not restoring him to liberty.

Now, whereas by the law of the land the said writ of *habeas corpus* should have been issued and granted and said petitioner should have been released and discharged from the custody of the sheriff of said Cassia county, Idaho, and said trial, conviction, and sentence cancelled and set at naught and held to be null and void—

The said petition- and applicant for said writ of *habeas corpus* prays that the order and judgment of said circuit court may be reversed, annulled, and altogether held for nothing; that said petitioner be restored to his liberty, and that he may have such other relief as he may be entitled to.

All of which is respectfully submitted.

J. W. DORSEY AND
J. H. HAWLEY,
*Attorneys for Petitioner and Appellant.*

Endorsed: No. 181. In the circuit court of the United States in and for the ninth circuit and district of Idaho. In the matter of the application of Jack Davis for a writ of *habeas corpus*. Assignments of error. Filed April 2nd, 1900. A. L. Richardson, clerk.

53 *Order Allowing Appeal.*

In the Circuit Court of the United States in and for the Ninth District and Circuit of Idaho.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus.*

Order allowing an appeal.

On reading and filing the petition of Jack Davis, the applicant above named, for an order allowing an appeal, and considering the assignment of error made and filed with the clerk of said court with said petition by the said petitioner, and on motion of James H. Hawley, Esq., and J. W. Dorsey, Esq., the attorney and counsel for said petitioner—

It is hereby ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the decision, order, and judgment made and entered herein on the 2nd day of April, 1900, whereby the application of said Jack Davis for a writ of *habeas corpus* was refused and denied.

It is further ordered that a complete transcript of the record herein and of all proceedings and papers upon which said decision, order, and judgment was made, duly authenticated, be forthwith transmitted to the Supreme Court of the United States.

It is further ordered, notice of intention to appeal to said court having been duly given and said appeal having been made and filed herein, that the amount of bond and security to be furnished by said applicant and petitioner be, and the same is hereby, fixed at the sum of three hundred ($300.00) dollars.

JAS. H. BEATTY, *Judge.*

54 Endorsed: No. 181. In the circuit court of the United States in and for the ninth circuit and district of Idaho. In the matter of the application of Jack Davis for a writ of *habeas corpus.* Order allowing appeal. Filed April 2nd, 1900. A. L. Richardson, clerk.

55 *Order Staying Execution.*

In the Circuit Court of the United States in and for the Ninth District and Circuit of Idaho.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus.*

Order staying execution.

To J. E. Burke, sheriff of Cassia county, State of Idaho:

You and all persons acting as your deputies, agents, servants, and employees are hereby notified that Jack Davis, now in your custody, has petitioned for, been allowed, and has perfected an appeal to the

Supreme Court of the United States from a decision, order, and judgment made and entered by said circuit court in the matter of said application for a writ of *habeas corpus* on the 2nd day of April, 1900, whereby said application was refused and denied, and that said Jack Davis has filed the necessary bond and security, and the same has been duly approved; and you are further notified that such appeal stays the execution and all further proceedings affecting said Jack Davis until said Supreme Court of the United States has fully passed upon and determined the same.

You and all person- assuming or having authority over said Jack Davis are therefore advised, requested, admonished, directed, and ordered that said Jack Davis be held in the custody of said sheriff of said county pending said appeal and until final action and judgment by the Supreme Court of the United States has been taken and entered in the matter of said appeal, and in the meantime you stay your hand as court and officers thereof and of said Cassia county and take no steps or further proceedings against said Jack Davis.

JAS. H. BEATTY,
*United States District Judge.*

Endorsed: No. 181. In the circuit court of the United States in and for the ninth district and circuit of Idaho. Order staying execution Filed April 3rd, 1900. A. L. Richardson, clerk.

56 *Journal Entries.*

At a stated term of the circuit court of the United States for the district of Idaho, held at Boisé, Idaho, April term, 1900.

Present: Hon. Jas. H. Beatty, judge.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus.* No 181.

MONDAY, *April 2nd*, 1900.

On this day in open court Jack Davis, by his attorneys, James H. Hawley, Esqr., and J. W. Dorsey, Esqr., presented his petition, duly verified, praying for the issuance of a writ of *habeas corpus* directed to J. E. Burke as sheriff of Cassia county, State of Idaho. Whereupon S. H. Hays, Esqr., attorney general of the State of Idaho, and W. E. Borah, Esqr., attorney for said J. E. Burke, appeared in this behalf and in opposition to the issuance of said writ, and it was agreed in open court by the counsel for the respective parties that the actual presence of said Jack Davis should be waived and that the subsequent proceedings herein should be had in his absence.

Whereupon the court refused the request of said Jack Davis for the issuance of said writ and granted a rule requiring the said J. E. Burke to show cause at 2 o'clock p. m. of this day why said writ should not issue.

The hour having arrived at which said J. E. Burke was to show cause why the writ of *habeas corpus* should not issue herein, the said J. E. Burke, by his attorney, W. E. Borah, Esqr., and the State of

Idaho appearing by said S. H. Hays, attorney general, made answer and return to said rule to show cause, and thereupon and after argument by the respective counsel, and being fully advised in the premises, the court made its order and judgment, in writing, denying the writ of *habeas corpus* prayed for and remanded the petitioner; to which said order counsel for petitioner excepted; which exception was allowed.

57 Thereupon the said Jack Davis, by his said attorneys, presented and filed his notice of appeal, in writing, appealing from said decision, order, and judgment of the court herein to the Supreme Court of the United States; whereupon and in open court the said Jack Davis, by his said counsel, presented his petition, in writing, praying for an order of the court allowing an appeal to the Supreme Court of the United States from the said order and judgment of the court denying the writ of *habeas corpus*, and filed by permission of the court with the clerk his assignment of errors therein and thereon, and, the said counsel for said J. E. Burke and the State of Idaho being present and not objecting thereto, the court made an order allowing an appeal herein and fixing the amount of bond and security to be furnished by said appellant, Jack Davis, on said appeal in the sum of three hundred dollars.

Thereupon the court, at the request of counsel for said Jack Davis, made in open court, the counsel for said J. E. Burke and the State of Idaho not objecting thereto, made and signed its order, in writing, directing said Jack Davis to be held in the custody of the said J. E. Burke, as sheriff of said Cassia county, pending the appeal herein, and staying further proceedings affecting said Jack Davis until final action and judgment of the Supreme Court of the United States has been taken and entered in the matter of said appeal.

TUESDAY, *April 3rd*, 1900.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus*. No. 181.

On this day the bond of Jack Davis in the sum of three hundred dollars upon appeal to the Supreme Court of the United States was approved, and thereupon citation on appeal was issued herein.

58 *Bond.*

In the Circuit Court of the United States in and for the Ninth Circuit and District of Idaho.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus*.

Bond on appeal.

Know all men by these presents that we, Jack Davis, as principal, and Geo. Spiegel and F. W. Galbraith, both of Boisé City, Ada county, State of Idaho, as sureties, are jointly and severally held and firmly bound unto J. E. Burke, the sheriff of Cassia county,

State of Idaho, in the sum of three hundred ($300) dollars, lawful money of the United States of America, to be paid to the said J. E. Burke, the said sheriff; for the payment of which, well and truly to be made, we bind ourselves and each of us and our and each of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 2nd day of April, 1900.

The condition of the above obligation is such that the said Jack Davis has taken an appeal to the Supreme Court of the United States to reverse the decision, order, and judgment rendered and entered by the circuit court of the United States, ninth judicial district, in and for the district of Idaho, in the above-entitled proceeding on the 2nd day of April, 1900, whereby the application of the said Jack Davis for a writ of *habeas corpus* was refused and denied.

Now, therefore, the condition of this obligation is such that if the said above-named Jack Davis shall prosecute said appeal to effect and answer all costs and damages if he fail to sustain his appeal, then this obligation shall be void; otherwise to be and remain in full force and effect.

JACK DAVIS. [SEAL.]
GEO. SPIEGEL. [SEAL.]
F. W. GALBRAITH. [SEAL.]

59 STATE OF IDAHO, } ss:
*County of Ada,* }

Geo. Spiegel and F. W. Galbraith, the sureties to the foregoing bond, being severally sworn, each for himself deposes and says that he is a resident and freeholder in Ada county, State of Idaho, and is worth the amount stated in the foregoing bond as the penalty thereof over and above all his just debts and liabilities, exclusive of property exempt from execution.

GEO. SPIEGEL.
F. W. GALBRAITH.

Subscribed and sworn to before me this 3rd day of April, 1900.

[SEAL.] SHERMAN G. KING,
*Notary Public.*

(Stamp.)
(Stamp.)

Approved:
JAS. H. BEATTY, *Judge.*

Endorsed: No. 181. In the circuit court, ninth circuit, district of Idaho, central division. In the matter of the application of Jack Davis for a writ of *habeas corpus*. Bond on appeal. Dated April 2nd, 1900. Filed April 3rd, 1900. A. L. Richardson, clerk.

60 In the Circuit Court of the United States in and for the Ninth District and Circuit of Idaho.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus.*

*Citation on Appeal.*

THE UNITED STATES OF AMERICA, *ss:*

To J. E. Burke, sheriff of Cassia county, State of Idaho, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the first day of June, 1900, pursuant to an appeal, duly allowed, filed in the clerk's office of the circuit court of the United States, ninth circuit, district of Idaho, central division, from the decision, order, and judgement of said court made and entered on the 2nd day of April, 1900, whereby the application of Jack Davis for a writ of *habeas corpus* was denied and said Jack Davis remanded to the custody of said J. E. Burke, as such sheriff, in which appeal Jack Davis is appellant and said J. E. Burke is respondent, to show cause, if any there be, why the order and judgement rendered against appellant in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 3d day of April, in the year of our Lord one thousand nine hundred.

JAS. H. BEATTY,
*United States District Judge, Sitting as the Judge of said Circuit Court.*

Due service of the foregoing citation admitted this 3 day of April, 1900.

S. H. HAYS,
*Attorney General of the State of Idaho.*
W. E. BORAH,
*Att'y for the Sheriff of Cassia County, State of Idaho.*

60½ [Endorsed:] No. 181. In the circuit court of the United States in and for the ninth district and circuit of Idaho. In the matter of the application of Jack Davis for writ of *habeas corpus.* Citation on appeal. Filed April 4th, 1900. A. L. Richardson, clerk.

61 *Clerk's Certificate.*

In the United States Circuit Court, Ninth Judicial Circuit and District of Idaho.

In the Matter of the Application of JACK DAVIS for a Writ of *Habeas Corpus.*

I, A. L. Richardson, clerk of the circuit court of the United States in and for the district of Idaho, do hereby certify that the foregoing transcript of pages, numbered from 1 to 61, inclusive, contains full, true, and correct copies of the pleadings and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the Supreme Court of the United States.

Witness my hand and the seal of said circuit court, affixed at Boisé, Idaho, this 7th day of April, 1900.

[Seal United States Circuit Court, Idaho.]

A. L. RICHARDSON, *Clerk.*

[10 cent U. S. internal-revenue stamp, canceled April 7th, 1900. A. L. R.]

Endorsed on cover: File No., 17,768. Idaho C. C. U. S. Term No., 286. Jack Davis, appellant, *vs.* J. E. Burke, sheriff of Cassia county, State of Idaho. Filed May 18th, 1900.